

A.G. Contract No.: KR02-1010TRN
ADOT ECS FILE No. JPA 01-126
Project: US 60, Design Build - GAN Loan
Section: Interstate 10 - Val Vista (Widening)
TRACS No. H 5370 01C
5-Year Program Item No.: _____

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into February 18th, 2003 pursuant to Arizona Revised Statutes Section 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA acting by and through its MAYOR and CITY COUNCIL (the "City"). Any capitalized terms not defined elsewhere shall have the meanings described in Section I.

I. DEFINITIONS

"Accelerated Project Schedule" means the construction of the Project to begin in or around May, 2001, and be completed in or around June, 2003.

"Board" means the Transportation Board of the Arizona Department of Transportation.

"Bridge Project" means the design and construction of (a) one additional Northbound and Southbound left turn lanes on each of the U.S. Route 60 freeway overpasses to provide Eastbound and Westbound turning movements on to the mainline of U.S. Route 60 at the following interchanges: Stapley Drive, Gilbert Road, and Val Vista Drive and (b) one additional Northbound through lane and one additional Southbound through lane at the following interchanges with U.S. Route 60: Stapley Drive and Val Vista Drive.

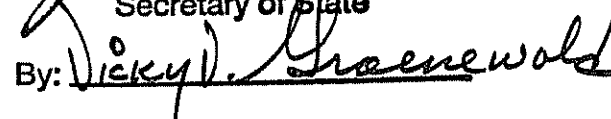
"Department" means the Arizona Department of Transportation.

"GAN" means the \$10,900,000 aggregate principal amount of Grant Anticipation Notes maturing on January 1, 2008 with a yield of 4.3% per annum issued by the Board on May 15, 2001 pursuant to the provisions of Title 28, Chapter 21, Article 3 of the Arizona Revised Statutes for the purpose of paying for the construction of the Project.

"MAG" means the Maricopa Association of Governments.

NO. 25811
Filed with the Secretary of State
Date Filed: 02/18/03


Secretary of State

By: 

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"U.S. 60 Project" means the design-build contract for the Department's U.S. Route 60 widening project between the junction of I-10 and U.S. 60 on the West and Val Vista Drive on the East.

"Project" means collectively (i) the construction of two (2) Eastbound and two (2) Westbound general purpose lanes of U.S. Route 60 between the State Route 101 Loop Interchange with U.S. Route 60 and Gilbert Road and (ii) the construction of one (1) Eastbound and one (1) Westbound general purpose lanes of U.S. Route 60 between Gilbert Road and Val Vista Drive.

"Project Funds" means the funds planned for the construction and, where applicable, the design of the Project.

"State Standards" means, unless otherwise agreed to by the parties to this Agreement, Department guidelines, specifications, rules and regulations as of the date of this Agreement for the design and construction of ramps, highways, landscaping, fencing and enclosure structures, drainage and flow structures and other related highway structures.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Sections 28-401 to enter into this Agreement and has by resolution, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by City Charter, Article 1, Section 103 to enter into this Agreement and has by resolution, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has scheduled the repayment of the debt service for the construction of the Project beginning in 2008 based on when the Project was anticipated to be programmed.

4. The City desires that the construction of the Project be completed in accordance with the Accelerated Project Schedule.

5. The Board has issued the GAN to accelerate the construction of the Project and will use the proceeds of the GAN to pay the construction costs for the Project.

6. To accelerate the construction of the Project in accordance with the Accelerated Project Schedule, the City has agreed to provide a portion of the cost of financing the Project, subject to the terms and conditions set forth below.

7. The Board has completed the bidding process for the construction phase of the Project and has awarded the construction contract for the Project. The contracts require that the Project be opened to traffic in or around June, 2003.

8. The City finds and determines that this Agreement will accelerate the completion of the Project which is of vital importance to the general welfare of the City. Further, the completed Project and bridge project will improve access to the regional freeway system which is anticipated to reduce traffic congestion on arterial streets and assist in improving air quality and thereby improve and enhance the economic welfare of the inhabitants of the City and will assist in the creation and retention of jobs.

III. SCOPE OF WORK

1. The State will:

a. Use its best efforts to cause the completion of the construction of the Project to be completed in accordance with the Accelerated Project Schedule. Administer the construction of the Project and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation attributable to the State.

b. Utilize the GAN proceeds for the Project and the Project Funds for the repayment of the GAN.

c. Use its best efforts to obtain timely reimbursements or payment of debt service on the GAN from the Federal Highway Administration for construction expenditures funded by, or debt service on, the GAN.

d. Be responsible for interest on the GAN in excess of the amounts paid by the City pursuant to Section IV (1)(b).

e. Use its best efforts to issue "change orders" on the U.S. 60 Project to cause the construction of the piers and other related work below the overpasses for the Bridge Project to be constructed as part of the U.S. 60 Project.

2. The City will:

a. Be responsible for funding enhancements requested by the City and approved by the State, and any related design and right of way costs resulting from the requested enhancements.

b. Be responsible for the payment of the amounts described in Section IV(1)(b) to assist in the financing of the Project.

IV. PROJECT FINANCING

1. GAN ISSUANCE

a. The Board has issued the GAN in an amount, along with other available funds, sufficient to provide funds for the construction of the Project. The proceeds from the issuance of the GAN will be used to pay Project construction and construction related costs.

b. The City agrees to pay to the State the following amounts on the following dates to assist with the financing of the Project:

<u>Due Date</u>	<u>Payment Amount</u>
June 20, 2003	\$234,350
December 20, 2003	\$234,350

June 20, 2004	\$234,350
December 20, 2004	\$234,350
June 20, 2005	\$234,350
December 20, 2005	\$234,350
June 20, 2006	\$234,350
December 20, 2006	\$234,350
June 20, 2007	\$234,350
December 20, 2007	\$234,350

c. Solely if this Agreement is terminated by the City without cause, the obligation of the City to pay the amounts as provided in Section IV(1)(b) shall survive the City's termination of this Agreement. If this Agreement is terminated at any time by the State, any obligations of the City to pay the amounts provided in Section IV(1)(b) shall be deemed fully satisfied.

V. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the construction of the Project, the repayment by the State of the GAN from the Project Programmed Funds and payment by the City of the amounts set forth in Section IV(1)(b).

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract. The City shall have like rights regarding State and contractor records pertaining to this Agreement and the Project.

5. In the event of any controversy which may arise out of this Agreement, the parties shall agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person, sent by facsimile transmission or deposited in the United States mail, postage prepaid addressed as follows:

For Contract Issues:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
Fax: (602) 712-7424

City of Mesa
City Manager
P.O. Box 1466
Mesa, AZ 85211
Fax: (480) 644-2175

For Payments Send to:

Arizona Department of Transportation
Contract Account
206 S. 17th Avenue, Mail Drop 205B
Phoenix, AZ 85007

City of Mesa
Finance Department
P.O. Box 1466
Mesa, AZ 85211

7. Notice shall be deemed received at the time it is actually received. Either party may change its mailing address, fax number or the person to receive notice by notifying the other party as provided in this Section.

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel pursuant to Arizona Revised Statutes Section 11-952.D, that the parties are authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

9. This Agreement may only be amended with the written consent of the parties hereto.

10. In the event that any clause, provision, subsection, Section or Article of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate such amendments, modification or supplements of or to this Agreement or take such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein and the other provisions of this Agreement shall, as so amended, modified or supplemented, or as otherwise affected by such action, remain in full force and effect.

11. For the purpose of any of the provision of this Agreement, neither the State nor the City, as the case may be, shall be considered in breach of or in default of its obligations under this Agreement as a result of the enforced delay in performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, fire, floods, epidemics, strikes, lock-outs, freight embargoes and unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such enforced delay, the time for performance of the State's and the City's obligations, as the case may be, shall be extended for the period of the enforced delay, provided that the Party seeking the benefit of this provisions shall have notified the other Party thereof in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after commencement of the cause, the period of delay shall be deemed to commence thirty (30) days prior to the giving of such notice.

12. The City's obligations hereunder do not and shall not constitute an indebtedness or pledge of the general credit of the City within the meaning of any constitutional, charter or statutory provision relating to the incurring of indebtedness nor a pledge of the full faith and credit of the City. The City's obligations hereunder are enforceable, to the extent permitted by law, exclusively from taxes, fees, charges, and other monies collected by the State and returned to the City for street and highway purpose pursuant to Title 28, Chapter 8, Article 2 of the Arizona Revised Statutes and are subordinate to any bonds issued under Title 48, Chapter 4, Article 5 of the Arizona Revised Statutes. The State shall not have the right to compel the exercise of any taxing power of the City to pay any amounts owed hereunder. Notwithstanding the foregoing, the City may, but shall not be required, to use any other lawfully available funds to satisfy its obligations.

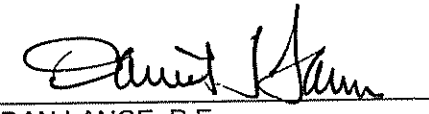
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF MESA

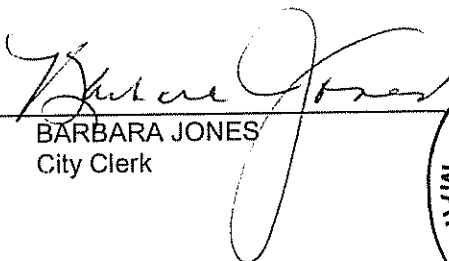
By: 
MICHAEL HUTCHINSON
City Manager

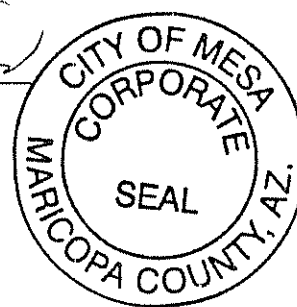
STATE OF ARIZONA

Department of Transportation

By: 
DAN LANCE, P.E.
Deputy State Engineer

ATTEST:

By: 
BARBARA JONES
City Clerk



The seal is circular with the text "CITY OF MESA" at the top, "CORPORATE" in the middle, "SEAL" at the bottom, and "MARICOPA COUNTY, AZ." around the perimeter.

APPROVAL OF THE MESA CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, Department Of Transportation and the CITY OF MESA, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 6th day of November, 2002.

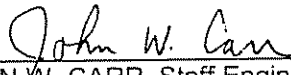
Debbie Spinn

Attorney

RESOLUTION

BE IT RESOLVED on this 17th day of July, 2002, that I, the undersigned VICTOR M MENDEZ, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the INTERMODAL TRANSPORTATION DIVISION, enter into an agreement with the CITY OF MESA, for the purpose of defining responsibilities for the acceleration of construction of the "Project", in accordance with the "Accelerated Project Schedule", all as defined in the Intergovernmental Agreement attached hereto.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer or higher for approval and execution.



JOHN W CARR, Staff Engineer
Development Group
for VICTOR M. MENDEZ, Director

CITY OF
MESA
Great People, Quality Service!
OFFICE OF CITY CLERK

*Certificate
of
CITY CLERK*

I, BARBARA JONES, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. _____ ENTITLED:

RESOLUTION NO. _____

RESOLUTION APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MESA, ARIZONA OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE ACCELERATION OF THE CONSTRUCTION OF GENERAL PURPOSE LANES OF U.S. ROUTE 60 BETWEEN THE STATE ROUTE 101 LOOP INTERCHANGE WITH U.S. ROUTE 60 AND VAL VISTA DRIVE, THE ACCELERATION OF THE DESIGN AND CONSTRUCTION OF BRIDGES ACROSS U.S. ROUTE 60 AT STAPLEY DRIVE, GILBERT ROAD AND VAL VISTA DRIVE, AND THE PAYMENT OF FUNDS BY THE CITY TO THE STATE TO ACCOMPLISH THE ACCELERATION OF CONSTRUCTION OF SUCH GENERAL PURPOSE LANES; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF MESA, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE CITY OF MESA, MARICOPA COUNTY, STATE OF ARIZONA, THIS ____ DAY _____, 2002.


BARBARA JONES
CITY CLERK



Resolution No. 7920

RESOLUTION APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MESA, ARIZONA OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE ACCELERATION OF THE ACCELERATION OF THE CONSTRUCTION OF GENERAL PURPOSE LANES OF U.S. ROUTE 60 BETWEEN THE STATE ROUTE 101 LOOP INTERCHANGE WITH U.S. ROUTE 60 AND VAL VISTA DRIVE, THE ACCELERATION OF THE DESIGN AND CONSTRUCTION OF BRIDGES ACROSS U.S. ROUTE 60 AT STAPLEY DRIVE, GILBERT ROAD AND VAL VISTA DRIVE, AND THE PAYMENT OF FUNDS BY THE CITY TO THE STATE TO ACCOMPLISH THE ACCELERATION OF CONSTRUCTION OF SUCH GENERAL PURPOSE LANES; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Mesa, Arizona (the "City") has determined that it will be beneficial to its citizens to cause the acceleration of the construction of general purpose lanes of U.S. Route 60 between the State Route 101 loop interchange with U.S. Route 60 and Val Vista Drive (the "Project") to be accelerated;

WHEREAS, the City, in order to provide for the financing of the acceleration of the Project, it is necessary for the City to enter into an Intergovernmental Agreement (the "IGA") with the State of Arizona (the "State") to provide for assistance in the financing of the Project;

WHEREAS, the City has determined it will be beneficial to its citizens to work with the Arizona Department of Transportation to cause the acceleration of the design and construction of additional lanes on the bridges across U.S. Route 60 at Stapley Drive, Gilbert Road and Val Vista Drive,

WHEREAS, there has been placed on file with the Clerk of the City and presented to this meeting the proposed form of an IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, THAT:

1. The form, terms and provisions of the IGA in the form of such document presented at this meeting are hereby approved, with such insertions, omissions and changes as shall be approved by the City Manager of the City, the execution of the IGA being conclusive evidence of such approval, and the City Manager and Clerk of the City are hereby authorized and directed, for and on behalf of the City, to sign and attest the IGA.

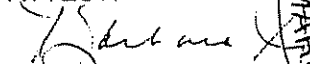
2. If any section, paragraph, clause or provision of this Resolution shall for any reason is held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

3. All orders and resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order or resolution or any part thereof.

4. The City Manager and all other City officials are hereby authorized and directed to execute any and all further agreements, documents and certificates and to take any and all actions that may be necessary or desirable in consummating the transactions contemplated in this Resolution and the IGA and pertaining to the financing of the Project. The execution and delivery of such documents shall constitute conclusive evidence of this Council's approval of such documents.


PASSED AND ADOPTED this 4th day of November 2002.

ATTEST:


BARBARA JONES, Clerk
City of Mesa, Arizona



APPROVED:


KENO HAWKER, Mayor, City of Mesa, Arizona



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION

JANET NAPOLITANO
ATTORNEY GENERAL

1275 WEST WASHINGTON STREET, PHOENIX, AZ. 85007-2926

TRN Main: (602) 542-1680
Direct: (602) 542-8855
Fax: (602) 542-3646

MAIN PHONE : (602) 542-1680
FACSIMILE : (602) 542-3646

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-1010TRN (JPA 01-126), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 30, 2002.

JANET NAPOLITANO
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", is written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/srs

Att.